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June 14, 2017

EX PARTE NOTICE VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation, *Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, PS Docket No. 16-269

Dear Ms. Dortch:

On Monday, June 12, 2017, Trey Hanbury, Tom Peters (by phone) and Sean Spivey, Counsel to Southern Communications Services, Inc. d/b/a Southern Linc (Southern Linc) met with David Furth, Roberto Mussenden, Erika Olsen (by phone) and Rasoul Safavian of the Federal Communications Commission's Public Safety and Homeland Security Bureau to discuss the agency's draft Report and Order regarding review of requests to opt-out from the First Responder Network Authority's (FirstNet's) plan for the nationwide public safety broadband network (NPSBN) in a state.[1]

During the meeting, Southern Linc expressed its support for the Draft Order, including the FCC's acknowledgment that "Congress intended to establish a process that affords states a meaningful opportunity to 'develop and complete requests for proposals,' as well as to prepare and file the required opt-out plan with the Commission."[2] Southern Linc also supported the Draft Order's conclusion that "[s]tates are entitled to make a deliberate, informed choice to opt-out of the network, so long as the statutory requirements are met."[3] Southern Linc discussed the arguments raised in its most recent responses to AT&T and FirstNet, copies of which are attached.[4]

[1] *See Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, Draft Report and Order, FCC-CIRC1706-02, PS Docket No. 16-269 (rel. June 1, 2017) ("Draft Order").

[2] *Id.* ¶ 17.

[3] *Id.*

[4] *See Ex Parte* Letters from Trey Hanbury, Counsel, Southern Communications Services, Inc. d/b/a Southern Linc to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269, GN Docket No. 17-83 (filed June 14, 2017) (attached).

Southern Linc also asked that the Draft Order disregard the "interoperability compliance matrix" FirstNet recently submitted in this proceeding.[5] FirstNet has provided no context for this spreadsheet and the document itself references numerous other documents that, in turn, refer to voluminous and highly technical standards documents and industry best-practices criteria. Neither the public, nor the Commission has had a meaningful opportunity to review FirstNet's "interoperability compliance matrix" or the highly technical materials the submission incorporates by reference. While the materials FirstNet submitted may yet prove relevant, FirstNet's belated submission has no place in the Draft Order.

Please contact me with any questions about this submission.

Respectfully submitted,

/s/ Trey Hanbury

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[5] *See Ex Parte* Letter from Patrick Donovan, Attorney, First Responder Network Authority to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 (filed June 5, 2017) ("FirstNet *Ex Parte*").

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Re: ***Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, PS Docket No. 16-269; *Accelerating Broadband Deployment*, GN Docket No. 17-83**

Dear Ms. Dortch:

Southern Communications Services, Inc. d/b/a Southern Linc (Southern Linc) disagrees with AT&T's recent interpretations of the key provisions of Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (the Spectrum Act)[1] submitted into the above-referenced proceedings.[2] AT&T has mischaracterized the process for states to opt-out of the First Responder Network Authority's (FirstNet's) plan for a state's participation in the Nationwide Public Safety Broadband Network (NPSBN). Southern Linc asks the Commission to adopt the rules and processes proposed in its draft Report and Order currently on circulation.[3]

AT&T's recent assertion that Congress intended to make the state opt-out process "exceptionally difficult and costly"[4] has no basis in the statute.[5] The Spectrum Act provides only two

[1] *See* Title VI, Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156 (codified in scattered sections of 47 U.S.C.) ("Spectrum Act").

[2] *See* Attachment to *Ex Parte* Letter from Joseph P. Marx, Assistant Vice President, AT&T Services Inc. to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 (filed May 22, 2016) ("AT&T Memorandum"); *Ex Parte* Letter from Alex Starr, Assistant Vice President – Senior Legal Counsel, AT&T Services, Inc. to Marlene Dortch, Secretary, FCC, PS Docket No. 16-269 (filed June 9, 2017) ("AT&T June 9 *Ex Parte*").

[3] *See Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, Report and Order*, PS Docket No. 16-269, FCC-CIRC1706-02 ("Draft Order").

[4] AT&T Memorandum at 6.

[5] *See* Draft Order ¶ 17 ("While we acknowledge that the statutory process may be exacting, we also believe that Congress intended to establish a process that affords states a meaningful opportunity to 'develop and complete requests for proposals,' as well as to prepare and file the required opt-out plan with the Commission. States are entitled to make a deliberate, informed choice to opt-out of the network, so long as the statutory requirements are met.").

requirements for a state opt-out plan: a state must demonstrate (1) compliance with the *minimum* technical interoperability requirements adopted by the FCC's advisory committee, and (2) interoperability with the NPSBN.[6] As FirstNet previously recognized, "Congress drew a balance between the interoperability and self-sustainment goals of the Act and preserving the ability of States to make decisions regarding the local implementation of coverage, capacity, and many other parameters if they wanted to exercise such control."[7] Congress set a reasonable bar for states that wish to opt-out of FirstNet's plan subject to meeting certain interoperability requirements.

Contrary to AT&T's claims, the Spectrum Act limits the FCC's review to whether or not the state has satisfied certain minimum technical interoperability requirements. The FCC's interoperability review process simply does not extend to a state's LTE core network architecture because nothing about that architecture necessarily precludes interoperability. In addition, the 180-day deadline for an opt-out state to "develop and complete" a request for proposal (RFP) does not require a fixed and immutable contract with the winning bidder or preclude reasonable amendments. Rigid insistence on an unchanging contract would thwart the intent of Congress in adopting the Spectrum Act to provide states with a meaningful opportunity to adopt alternative means of satisfying the public safety communications objectives the Spectrum Act established. Finally, nothing in the Spectrum Act requires a Governor of a state to provide personal notice of the state's decision to opt-out as opposed to acting through delegated authority.

Opt-Out States Are Allowed to Operate Their Own Core Network Elements Under the Spectrum Act

The Spectrum Act demands FirstNet "utilize, to the maximum extent economically desirable, existing – (A) commercial or other communications infrastructure; and (B) Federal, State, tribal or local infrastructure."[8] The FCC's Interoperability Board concluded in 2012 that this statutory directive may require integrating "[e]xisting EPC infrastructure deployed prior to operation of the NPSBN EPC . . . into the NPSBN Core."[9] Ultimately, multiple core elements do not impinge upon the Spectrum Act's interoperability requirements because there are legacy networks, each with its own core, which will need to be integrated into the NPSBN core.

AT&T invents an infrastructure distinction that does not exist: it envisions a "commercial core" that is distinct from a "public safety core."[10] In AT&T's conception, all public safety traffic on a

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[6] Spectrum Act § 6302(e)(3)(C), 47 U.S.C. § 1442(e)(3)(C).

[7] *See Further Proposed Interpretations of Parts of the Middle Class Tax Relief and Job Creation Act of 2012*, 80 Fed. Reg. 13,336, 13,341 (Mar. 13, 2015) ("Second FirstNet Interpretation Public Notice").

[8] Spectrum Act § 6206(c)(3), 47 U.S.C. § 1426(c)(3) (2015). FirstNet's responsibility to leverage existing infrastructure to the maximum extent economically desirable is not limited to FirstNet's development of the RFP for the NPSBN, contrary to AT&T's assertion. *Compare* AT&T Memorandum at 4 *with* Spectrum Act § 6206(b)(2), 47 U.S.C. § 1426(b)(2) (2015) (instructing FirstNet to take several actions "[i]n carrying out the duties and responsibilities of [section 6206], *including* issuing requests for proposals . . . ." (emphasis added).

[9] *See* Technical Advisory Board for First Responder Interoperability, *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network*: Final Report at 29 (May 22, 2012), https://ecfsapi.fcc.gov/file/7021919873.pdf ("Interoperability Board Report").

[10] AT&T Memorandum at 6.

state opt-out network would be directly routed to the FirstNet core and all commercial traffic would be routed to a separate state core that AT&T (belatedly) acknowledges an opt-out state must implement to have a functioning network.

AT&T's claims about network architecture are not credible. An opt-out state cannot operate an LTE network – much less identify and route public safety traffic – unless it deploys a core. If the traffic is public safety traffic, then a state-level core can instantaneously route the traffic consistent with the interoperability requirements in the Interoperability Board Report.[11] Commercial operators routinely perform this same function today and have extensive experience in managing these types of inter-exchanges in ways that lead to a seamless, reliable consumer experience. This type of handoff is commonplace and, indeed, fully anticipated by the Interoperability Board's design standards.[12]

FirstNet itself has explained that states **must** describe their core network design to ensure that the handoff to the FirstNet core operates as reliably as handoffs in the commercial sector. According to FirstNet:

> A core network . . . would typically control critical authentication, mobility, routing, security, prioritization rules, and support system functions, including billing and device services, along with connectivity to the Internet and public switched network. The RAN, however, would typically dictate, among other things, the coverage and capacity of last mile wireless communication to customer devices and certain priority and preemption enforcement points at the wireless interface of the network. **Either alone is an incomplete network and each must work seamlessly with the other. As a result, FirstNet and such States must similarly work together to ensure that public safety is provided the critical wireless services contemplated by the Act.**[13]

FirstNet added that "[t]hese technical and operational functions and interactions between the RAN and core network . . . can vary to a limited extent that would not necessarily jeopardize the interoperability goals of the Act."[14]

AT&T's argument that "keeping the public safety core network within the NPSBN . . . ensur[es] that service provided to first responders over an opt-out State's RAN can be 'comparable' to FirstNet's by, among other things, maximizing the required compliance with all the federal interoperability requirements, technical standards, and network policies,"[15] is therefore circular. If the Spectrum Act truly prevented opt-out states from deploying core network equipment so that FirstNet could "ensur[e] . . . compliance with all federal interoperability requirements," then Congress would not have needed to adopt the interoperability requirements for opt-out state plans in section 6302(e)(3)(C) of the Spectrum Act.

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[11] *See generally* Interoperability Board Report.

[12] *See* Interoperability Board Report § 4.5.

[13] *See* Second FirstNet Interpretation Public Notice, 80 Fed. Reg. at 13,345 (emphasis added).

[14] *See* Second FirstNet Interpretation Public Notice, 80 Fed. Reg. at 13,345; *see also id.* at 13,340 (finding that the network policies set forth in section 6206(c) of the Spectrum Act "will either directly or indirectly apply to any State RAN deployment.").

[15] AT&T Memorandum at 5.

The 180-Day Deadline for an Opting-Out State to "Develop and Complete" an RFP Means the State Must Issue an RFP within 180 Days

AT&T incorrectly claims that the Spectrum Act requires opting-out states to "have in place an executed contact with a vendor" within 180 days of a state providing notice of its intent to opt-out.[16] AT&T further claims that "Southern Linc argues that the Spectrum Act allows an opt-out State to submit for Commission review merely a request for proposal."[17] Southern Linc did no such thing and AT&T misunderstands Southern Linc's argument in the same way it misunderstands the statutory text's requirements.

AT&T's stated justification for requiring states to have awarded a contract to a vendor within 180 days of opting-out is that the Commission must be able to timely review a complete opt-out proposal. All stakeholders should move with all deliberate speed towards deployment of a dedicated public safety network. But the 180-day deadline to "develop and complete" an RFP is independent from the separate statutory requirement to submit an alternative plan to the FCC.[18] Assuming the statute required a state to award a contract to a vendor within 180 days of providing notice of its intent to opt-out—which it does not—the Spectrum Act does not apply this same 180-day deadline for *submitting* a copy of the awarded contract to the FCC. The distinct requirements in sections 6203(e)(3)(B) and (C) of the Spectrum Act do not support AT&T's argument. And AT&T has not provided any countervailing evidence for why the Commission should abandon the generally accepted definition of a "request for proposal" when construing the plain language of the Spectrum Act.[19]

In the Draft Order, the FCC follows the logical approach of giving opt-out states an additional 60 days following the completion of the RFP process by which to submit their alternative plans.[20] According to the Draft Order, "[j]ust as the [Spectrum] Act recognizes that FirstNet itself will 'develop' an RFP, then complete the RFP 'process,' and then deliver to states the 'proposed plan for buildout of the nationwide, interoperable broadband network in such State' . . . we believe it reasonable to afford states that have developed and completed RFPs an additional 60-day period to submit alternative state plans to the Commission."[21] Southern Linc agrees.

AT&T's Disparagement of Opt-Out States' Motives is Misguided and Does Not Support Denying States the Opportunity to Amend or Supplement their Alternative Plans

AT&T claims that states might be "tempt[ed] to suspend, toll, or extend the Commission's shot clock" for issuing a decision on a state's opt-out plan if given an opportunity to amend or supplement their plans to correct errors or provide additional information.[22] AT&T's claim is

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[16] *See* AT&T Memorandum at 5-7; AT&T June 9 *Ex Parte* at 3.

[17] AT&T Memorandum at 6.

[18] *Compare* Spectrum Act § 6302(e)(3)(B), 47 U.S.C. § 1442(e)(3)(B) (2015) *with* Spectrum Act § 6302(e)(3)(C), 47 U.S.C. § 1442(e)(3)(C) (2015).

[19] *See Ex Parte* Letter from Trey Hanbury, Counsel to Southern Linc to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 and GN Docket No. 17-83 at 6-7 (filed May 8, 2017) ("Southern Linc *Ex Parte*").

[20] Draft Order ¶ 20.

[21] *Id.*

[22] *See* AT&T Memorandum at 7-8.

unsubstantiated. States are just as eager as FirstNet to have access to a dedicated public safety broadband network and have regularly engaged with FirstNet and the Commission throughout this process.[23] States have no motive to stall the deployment of the NPSBN.

So long as an initial plan is "robust and fully realized" as the Draft Order requires, offering states some latitude to alter or revise their plans to account for changing conditions will neither delay the review process nor jeopardize the interoperability requirements established under the Spectrum Act.[24] Pretending that a single agreement entered into at the outset of a multi-year network engagement will cover all eventualities is neither realistic nor required by the Spectrum Act. Indeed, the arrangement proposed for opting-out states is far less forgiving than the FirstNet RFP process, which involved multiple iterations of information gathering and several updates to the draft RFP.[25] As the FCC notes in the Draft Order, "this is a first-of-its kind proceeding, [and] parties should be allowed a limited means of correction."[26] In addition, longstanding principles of administrative law and due process require the FCC to allow states to amend or supplement their opt-out plans at least once, to provide any additional information or correct any errors that might form the basis of the Commission's initial decision to reject an opt-out plan.[27] States should be able to supplement or amend their plans prior to the close of the shot-clock window. The Commission's "robust and fully realized" standard for alternative plans is reasonable and more easily administered than AT&T's proposal that any amendments be "*de minimus*."[28]

AT&T Completely Ignores Southern Linc's Statutory Construction Arguments Demonstrating that the Spectrum Act Does Not Require the Governor of a State to Provide Opt-Out Notice Himself or Herself

AT&T offers no counterargument to Southern Linc's analysis of the statutory provisions governing a state's delivery of opt-out notice to the FCC.[29] As Southern Linc explained, section 6302(e) of the Spectrum Act makes various references to "the Governor," "the Governor of a State," and "the Governor of each state, or his designee."[30] The Spectrum Act uses these phrases

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[23] *See, e.g.*, Response of the State of Alabama Notice of Proposed Rulemaking, PS Docket No. 16-269, *et al*. at 2 (filed Oct. 21, 2016) ("The State of Alabama is committed to cooperating with FirstNet to advance the implementation of the NPSBN in the best interest of our State and in the best interest of all of our nation's first responders.").

[24] *See* Draft Order ¶¶ 20, 35.

[25] FirstNet issued its RFP for the NPSBN on January 13, 2016, almost four years following Congress's passage of the Spectrum Act. *See* Press Release, First Responder Network Authority, FirstNet Issues RFP for the Nationwide Public Safety Broadband Network (Jan. 13, 2016), http://bit.ly/2pRQWj8. FirstNet released 15 amendments to the RFP between January and May 2016, and ultimately awarded a contract based on the RFP a year after releasing the RFP.

[26] Draft Order ¶ 36.

[27] *See, e.g.*, *Biltmore Forest Broad. FM, Inc. v. FCC*, 321 F.3d 155, 160 (D.C. Cir. 2003) (holding that lack of notice to the applicant "would deprive it of fair warning that its application might be disqualified without an opportunity to correct it").

[28] *See* AT&T June 9 *Ex Parte* at 3-4.

[29] *See* AT&T Memorandum at 8-9.

[30] *See* Spectrum Act §§ 6302(e)(3)(A), (e)(2), (e)(1), 47 U.S.C. §§ 1442(e)(3)(A), (e)(2), (e)(1) (2015).

interchangeably.[31] AT&T ignores the statutory construct of section 6302(e) and instead accuses Southern Linc of "overlook[ing] the grave import of the opt-out notice."[32] Not so. The seriousness of a state's decision to participate in or opt-out from the NPSBN does nothing to diminish the right afforded states under the Spectrum Act to construct their own public safety network so long as it meets the minimum interoperability requirements set forth in the Spectrum Act.

Southern Linc agrees with the FCC that there is no sound reason to require a Governor personally to submit a state's opt-out plan.[33] Requiring either a Governor to personally sign and submit an opt-out plan would serve "no practical purpose,"[34] and Congress never intended "for the Governor to be responsible for the purely ministerial act of transmitting notice of the decision to the Commission."[35] Requiring a Governor to "memorialize his/her delegation of authority in writing[ ] and . . . include that written delegation with the opt-out notice to the Commission" serves no practical purpose either.[36] The FCC should therefore adopt the Draft Order's proposal to permit a Governor to authorize a designee to submit the state's opt-out plan.

Please contact me with any questions about this submission.

Respectfully submitted,

/s/ Trey Hanbury

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[31] *Compare* Spectrum Act § 6302(e)(1), 47 U.S.C. § 1442(e)(1) (2015) (requiring FirstNet to provide notice of completion of the NPSBN RFP process and details of the proposed buildout and funding level to "the Governor of each State, or his designee") with Spectrum Act § 6302(e)(2), 47 U.S.C. § 1442(e)(2) (2015) (establishing a timeline for a state opt-out decision "[n]ot later than 90 days after the date on which the Governor of a State receives notice under paragraph (1)"). The Spectrum Act's use of the phrases "Governor of each State, or his designee" in section 6302(e)(1) and "Governor of a State" in section 6302(e)(2) when describing the same activity (receipt of FirstNet's plan for the NPSBN) shows that the two phrases are interchangeable.

[32] *See* AT&T Memorandum at 9.

[33] Draft Order ¶ 12.

[34] *Id*.

[35] *Id*.

[36] *See* AT&T June 9 *Ex Parte* at 2.

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Re: ***Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, PS Docket No. 16-269; *Accelerating Broadband Deployment*, GN Docket No. 17-83**

Dear Ms. Dortch:

The First Responder Network Authority (FirstNet) recently submitted a notice of ex parte presentation that once again seeks to erect unnecessary procedural barriers to a state's choice to opt-out from the FirstNet radio access network.[1] While purporting to implement the Spectrum Act,[2] FirstNet offers unduly rigid interpretations of the state opt-out process that neither reflect the statutory text, nor honor Congress's decision to permit states a measure of autonomy on how to support public safety officials in their state. The draft order circulated by Chairman Pai, by contrast, implements the plain language of the statute by not imposing artificial obstacles to a state's effort to invoke its opt-out rights under the law. Southern Communications Services, Inc., d/b/a/ Southern Linc (Southern Linc) therefore encourages the Commission to adopt the draft Order as written.

For its part, FirstNet renews its effort to use the Commission's process for evaluating the interoperability of state opt-out plans as a vehicle to prohibit states or their network partners from employing their own core network elements. FirstNet never addresses the reality that a state or its network partner cannot have visibility into the traffic on its network—and therefore cannot assess and manage capacity, security, and reliability of traffic as the Spectrum Act requires the state to do—unless a state employs its own core. The draft order correctly recognizes that the Commission's role is limited to evaluating the interoperability of a state's radio access network (RAN). The Commission's draft order does not reject an otherwise qualified plan merely because it contains core network elements. The Commission should adopt its proposed approach.

[1] Letter from Patrick Donovan, Attorney, First Responder Network Authority, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269 (filed May 26, 2017) ("FirstNet Ex Parte").

[2] *See* Title VI, Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156 (codified in scattered sections of 47 U.S.C.) ("Spectrum Act").

I. The Commission Should Adopt its Proposed Procedures For Administering the State Opt-Out Process

FirstNet claims that its proposed procedures for reviewing opt-out plans merely implement the language of the statute.[3] But on virtually every issue, FirstNet proposes needlessly rigid rules or policies that are not compelled by the text of the statute, and indeed are inconsistent with the plain language of the statute. By contrast, the draft order correctly recognizes that any opt-out procedures should respect Congress's decision to authorize state opt-outs and should give states a genuine opportunity to work in partnership with the Commission and FirstNet to demonstrate that their opt-out plans satisfy the statute's interoperability requirement.

The Draft Order, for example, correctly recognizes that the 180-day window to "develop and complete" an RFP could "reasonably be read" to support a number of different requirements.[4] Accordingly, the draft properly provides additional time to give states "flexibility to complete their alternative plans."[5] The Draft Order also properly recognizes that there is no sound reason to require a Governor personally to submit a state's opt-out plan.[6] Such a requirement would serve "no practical purpose,"[7] and the Commission therefore should adopt the draft's proposal to permit a Governor to authorize a designee to submit the opt-out plan.

Substantively, the Draft Order correctly reflects the view that the Commission's role is to ensure interoperability with the FirstNet network rather than delving more broadly into network policies. The statute itself authorizes the Commission to assess interoperability and entrusts to NTIA the task of ensuring such issues as "comparable security, coverage, and quality of service to that of the nationwide public safety broadband network."[8] The draft accordingly recognizes that a state plan submitted to the Commission need only satisfy the interoperability requirements of the statute and address how the state will provide for the "construction, maintenance, operation, and improvements of the state RAN."[9] The draft also properly proposes to limit the Commission's review to compliance with certain portions of the Interoperability Board Report and interoperability of the RAN with the nationwide public safety broadband network.[10] The Commission should adopt the content requirements for state plans set forth in the draft without change.

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[3] *See, e.g.*, FirstNet Ex Parte at 6.

[4] *See Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network*, Report and Order*, PS Docket No. 16-269, FCC-CIRC1706-02 ¶ 19 ("Draft Order").

[5] *Id*.

[6] *Id*. ¶ 12.

[7] *Id*.

[8] Spectrum Act § 6302(e).

[9] Draft Order ¶¶ 24-25.

[10] *Id*. ¶¶ 52, 58-62.

II. The Commission Should Not Prohibit States From Employing Their Own Core Network Elements

Southern Linc has previously explained why the Spectrum Act does not prohibit states from using core network elements as part of their opt-out plans.[11] FirstNet argues that Section 6302(e) explicitly references only the RAN and thus establishes that states' plans may not include cores.[12] But the FCC is perfectly capable of reviewing a state's opt-out plan should it include the use of non-FirstNet core network elements. The FCC's Interoperability Board authored a comprehensive report that contemplates several different network architecture scenarios, including network scenarios that use existing core networks.[13] The FCC can meet its statutory requirement by reviewing a state's alternative plan and determining that the state "will be in compliance with the minimum technical interoperability requirement developed under section 6203,"[14] including requirements associated with multiple core network elements.

FirstNet also acknowledges that the Spectrum Act requires states to submit plans for the "construction, maintenance, operation, and improvements" of the RAN, as well as demonstrate "comparable security, coverage, and quality of service to that of the nationwide public safety broadband network."[15] Southern Linc has explained that network operators cannot distinguish between public safety communications and commercial communications over the radio access network without the traffic interacting with some core network elements. Without the functionality provided by the core network, states cannot provide any service, let alone make the showings required by the statute. FirstNet construes the statute in a way that makes a state's opt-out option illusory—an illogical result that Congress could not have intended.

FirstNet's latest filing affirms that states may use their own core networks to serve commercial customers.[16] That approach implies that states will manage commercial traffic on their networks, but hand-off public safety traffic to the NPSBN. FirstNet does not explain how a state network would distinguish between commercial and public safety traffic at the RAN level, because the core network is what provides the intelligence regarding the traffic. Similarly, FirstNet's approach would prevent states from satisfying other portions of the Spectrum Act, such as the statute's express authorization for states to use excess capacity through public-private partnerships.[17]

The Draft Order's silence on core network architectures properly reflects the scope of the Commission's review authority.[18] The Draft Order correctly recognizes that while the statutory opt-

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[11] *See generally* Letter from Trey Hanbury, Southern Communications Services, Inc., d/b/a/ Southern Linc, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 16-269, GN Docket No. 17-83 (filed May 8, 2017).

[12] FirstNet Ex Parte at 3.

[13] *See* Technical Advisory Board for First Responder Interoperability, *Recommended Minimum Technical Requirements to Ensure Nationwide Interoperability for the Nationwide Public Safety Broadband Network*: Final Report at 29 (May 22, 2012), https://ecfsapi.fcc.gov/file/7021919873.pdf ("Interoperability Board Report").

[14] Spectrum Act § 6302(e)(3)(C)(i)(I).

[15] Spectrum Act § 6302(e).

[16] FirstNet Ex Parte at 5.

[17] Spectrum Act § 6302(g).

[18] Draft Order ¶ 62.

out process is rigorous, "Congress intended to establish a process that affords states a meaningful opportunity to 'develop and complete requests for proposals,' as well as to prepare and file the required opt-out plan with the Commission."[19] The Draft Order strikes the right balance of implementing the statutory procedures while respecting Congress's choice to allow states to opt-out and giving states a meaningful opportunity to do so. The Commission should adopt the Draft Order as written.

Please contact me with any questions about this submission.

Respectfully submitted,

/s/ Trey Hanbury

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[19] *Id*. ¶ 17.